



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,593	01/10/2001	Michael G. Walker	PC-0025 CIP	9627

27904 7590 10/10/2002

INCYTE GENOMICS, INC.
3160 PORTER DRIVE
PALO ALTO, CA 94304

[REDACTED] EXAMINER

LI, RUIXIANG

ART UNIT	PAPER NUMBER
1646	6

DATE MAILED: 10/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/758,593	WALKER, MICHAEL G.	
	Examiner Ruixiang Li	Art Unit 1646	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 September 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) 7-20 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-6 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 January 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>/5</u> .	6) <input type="checkbox"/> Other: _____ .

DETAILED ACTION

I. Status of Application, Amendments, and/or Claims

The amendment filed in Paper No. 15 on September 3, 2002 has been entered in full. Claims 1-6 are pending and under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

II. Information Disclosure Statement

The information disclosure statement (filed on September 3 in Paper No. 15) has been received by the office. The references cited in PTO-1449 form have been fully considered.

III. Priority

Based on applicants' priority statement (Paper No. 15, filed on September 3, 2002) and an inspection of the parent application (U.S. Application Serial No. 09/299,708, filed on April 26, 1999), the Examiner has concluded that the subject matter defined in Claims 1-6 has an effective filing date of January 10, 2001 (i.e., the filing date of current application). This is because while disclosing a nucleic acid sequence of SEQ ID NO: 2, which encodes an amino acid sequence set forth in SEQ ID NO: 1, Application Serial No. 09/299,708 fails to provide a patentable utility for the claimed invention and thus they do not enable one skilled in the art to use the claimed invention.

IV. Withdrawn Objections and/or Rejections

The objection to Disclosure, as set forth at page 3 of the previous Office Action (Paper No. 9, May 1, 2002) has been withdrawn in view of applicants' amendment to the disclosure.

V. Claim Rejections Under 35 U. S. C. § 102 (a)

The rejection of Claims 1, 2, 4, and 5 under 35 U.S.C. 102 (a), as set forth at page 4 of the previous Office Action (Paper No. 9, May 1, 2002), remains.

In response to the rejection, applicants have filed a preliminary amendment to the instant application for a claim to domestic priority to U.S. Application Serial No. 09/299,708, filed on April 26, 1999, now abandoned. However, the Examiner has determined the effective filing date for the current application is January 10, 2001 for the reasons set forth above. Therefore, the prior art by Pallavicini et al. is effective to reject Claims 1, 2, 4, and 5 under 35 U.S.C. 102 (a).

VI. Claim Rejections Under 35 U. S. C. § 103 (a)

The rejection of Claims 3 and 6 under 35 U.S.C. 103 (a), as set forth at pages 4-5 of the previous Office Action (Paper No. 9, May 1, 2002), remains.

Because the prior art by Pallavicini et al. is effective to reject Claims 1, 2, 4, and 5 1-6 under 35 U.S.C. 102 (a), the rejection of claims 3 and 6 under 35 U.S.C. 103 (a) also stands.

VII. Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruixiang Li whose telephone number is (703) 306-0282. The examiner can normally be reached on Monday-Friday, 8:30 am-5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne Eyler, can be reached on (703) 308-6564. The fax phone number for this Group is (703) 305-3014 or (703) 308-4242.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [yvonne.eyler@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published

Art Unit: 1646

in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG
89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Ruiyang Li
Examiner
October 4, 2002

Elizabeth C. Kemmerer

ELIZABETH KEMMERER
PRIMARY EXAMINER